

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-105325-14

Date:
April 10, 2015

Shareholder =
FC =
Year 1 =
Year 2 =
Year 3 =
Date 1 =
Tax Advisor =
Legal Advisor =

Dear :

This is in response to a letter dated January 31, 2014, and subsequent correspondence submitted by Shareholder's authorized representatives that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code (the "Code") and Treas. Reg. § 1.1295-3(f) with respect to Shareholder's investment in FC.

The ruling contained in this letter is based upon information and representations submitted by Shareholder and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

FACTS

Shareholder has resided in the United States since Year 1. On Date 1, Shareholder acquired common shares of FC. Effective Date 1, FC became a passive foreign investment company ("PFIC") with respect to Shareholder and continues to be a PFIC with respect to Shareholder.

For all relevant years Shareholder relied on Tax Advisor to prepare her income tax returns. Although Tax Advisor was aware of Shareholder's acquisition of FC shares, Tax Advisor did not inform her that FC was a PFIC or that a QEF election was available. In Year 3, Shareholder received a letter from Legal Advisor indicating that in her view, FC was not a PFIC.

Recently, Tax Advisor consulted with an international tax specialist regarding possible transactions by FC. During this consultation, it became clear that FC likely was a PFIC with respect to Shareholder since Year 2.

Shareholder submitted affidavits, under penalties of perjury, describing the events that led to her failure to make a QEF election with respect to FC by the election due date, including the role of Tax Advisor.

Shareholder has paid an amount sufficient to eliminate any prejudice to the United States government as a consequence of her inability to file amended returns, in accordance with a signed closing agreement between Shareholder and the Commissioner. Further, Shareholder has filed an amended return for each of her subsequent taxable years affected by the retroactive election.

Shareholder represents that, as of the date of her request for ruling, the PFIC status of FC had not been raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Shareholder requests the consent of the Commissioner to make a retroactive QEF election with respect to FC under Treas. Reg. §1.1295-3(f), retroactive to Year 2.

LAW

Section 1295(a) provides that a PFIC will be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under section 1295(b) applies to such PFIC for the taxable year; and (2) the PFIC complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under section 1295(b)(2), a QEF election may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for such taxable year. To the extent provided in regulations, such an election may be made after such due date if the taxpayer failed to make an election by the due date because the taxpayer reasonably believed the company was not a PFIC.

Under Treas. Reg. §1.1295-3(f), a shareholder may request the consent of the Commissioner to make a retroactive QEF election for a taxable year if:

1. the shareholder reasonably relied on a qualified tax professional, within the meaning of Treas. Reg. § 1.1295-3(f)(2);
2. granting consent will not prejudice the interests of the United States government, as provided in Treas. Reg. § 1.1295-3(f)(3);
3. the request is made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the corporation for any taxable year of the shareholder; and
4. the shareholder satisfies the procedural requirements of Treas. Reg. § 1.1295-3(f)(4).

The procedural requirements include filing a request for consent to make a retroactive election with, and submitting a user fee to, the Office of the Associate Chief Counsel (International). Treas. Reg. § 1.1295-3(f)(4)(i). Additionally, affidavits signed under penalties of perjury must be submitted that describe:

1. the events that led to the failure to make a QEF election by the election due date;
2. the discovery of such failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on such professional.

Treas. Reg. § 1.1295-3(f)(4)(ii) and (iii).

CONCLUSION

Based on the information submitted and representations made with Shareholder's ruling request, we conclude that Shareholder has satisfied Treas. Reg. § 1.1295-3(f). Accordingly, consent is granted to Shareholder to make a retroactive QEF election with respect to FC for Year 2, provided that Shareholder complies with the rules under Treas. Reg. § 1.1295-3(g) regarding the time and manner for making the retroactive QEF election. We have, consequently, approved a closing agreement with Shareholder with respect to those issues affecting her tax liability on the basis set forth above. Pursuant to our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Kristine Crabtree
Assistant to the Branch Chief, Branch 2
(International)

cc: